

REMARKS

This amendment is responsive to the Office Action issued on November 26, 2008, wherein the Examiner rejected Claims 40-64 under 35 U.S.C §103(a) as being unpatentable over Jeffers (US 5,258,002).

In the present amendment, Applicant has amended Claims 40, 42, 49, 51 and 52 and cancelled Claims 58-64 in order to clarify the disclosed embodiments.

EXAMINER INTERVIEW

Applicant's representative wishes to thank Examiner Ackun for the interview held on March 13, 2009. Proposed claim amendments were forwarded to Examiner Ackun prior to the interview. During the interview, the proposed amendments were discussed in relation to overcoming the rejections under 35 U.S.C §103(a). In addition, the cancellation of independent Claims 58 and 64 was discussed.

SUMMARY OF APPLICANT'S RESPONSE

In the present amendment, Applicant has amended Claims 40, 42, 49, 51 and 52 and has cancelled Claims 58-64 in order to clarify the invention. More specifically, independent Claims 40 and 49 have been amended to recite that **the first and second surfaces are formed at first and second angles**, respectively, relative to the axial line as disclosed in Paragraph 0024 and as shown in Fig. 3. In addition, Claims 40 and 49 have been amended to recite that **the first and second curved surfaces in combination with the first and second angles generate the cutting edge** as disclosed in Paragraph 0024 and in Fig. 3 of the application as originally filed. The

preambles of Claims 40 and 49 have been amended to recite that the blade may be configured for cutting metal foil and/or a metal graphite composite as disclosed in Paragraph 0020 of the application as originally filed. In Claims 40, 42, 49, 51 and 52, the term “body axis” has been amended to “axial line” as recited throughout the application as originally filed. As such, Applicants submit that no new matter is added by the claim amendments.

After reviewing the rejections asserted in the Office Action in light of the cited art and following discussion of the rejections and the proposed amendments with Examiner Ackun, Applicant respectfully submits that the combination of features recited in amended Claims 40 and 49 are believed to be allowable.

Rejection under 35 U.S.C. §103(a) in view of Jeffers

In the Office Action, the Examiner rejected Claims 40-64 under 35 U.S.C §103(a) as being unpatentable over Jeffers (US 5,258,002). (Office Action, Page 2).

It is indicated in the Office Action that the “blade of Jeffers can be seen to have all of the elements of the claims, but for curves or a camber on the first and second surfaces that define the blade cutting edge.” It is further indicated that “it is conventional to provide a curved or cambered surface to the portion of a blade that defines the blade cutting edge. Note the prior art of record, for example. Thus it would have been obvious as a design expedient (obvious choice of design) or to provide increased strength to the cutting area of the blade, to provide first and second curves to the noted surfaces of the Jeffers blade.” (Office Action, Page 2).

After a thorough review of the rejections asserted in the Office Action, Applicant maintains a belief in the patentability of the claimed embodiments of the present application for the following reasons.

Firstly, Jeffers, as understood, is directed toward a surgical knife having a blade with a blunt tip and a “V-shaped cutting portion extending from the blunt tip to the widest part of the blade.” (Abstract). Furthermore, as can be see in Figs. 1 and 2 of Jeffers, the blade “has a thin cross-section ... and may be formed ... from a sheet material.” Furthermore, Fig. 3 of Jeffers is understood to illustrate that “the sharpened side edges 11” of the blade are formed on only one of the sides of the blade. (Fig. 2; Col. 2, ll 61-67).

In contrast, Applicant’s blade includes “a first surface being formed at a first angle relative to the axial line and having a first curve” and “a second surface being formed at a second angle relative to the axial line and having a second curve” as recited in amended Claims 40 and 49. In Applicant’s blade “the first and second curved surfaces in combination with the first and second angles generat[e] the cutting edge” as recited in amended Claims 40 and 49. In this regard, Applicant’s blade includes two formed surfaces (i.e., the first surface and the second surface).

Based upon the above, Jeffers is only understood to include a single formed surface (i.e., the sharpened side edges 11) and is not understood to include both first and second formed surfaces. Furthermore, Jeffers is not understood to posses first and second curved surface formed at an angle relative to the axial line. Jeffers is only understood to posses a single surface which may be formed at an angle relative to an axial line (i.e., the sharpened side edge 11). In this regard, the blade of **Jeffers is not understood to include first and second surfaces formed at first and second angles, respectively, relative to an axial line as claimed in amended Claims 40 and 49.**

Secondly, Applicant submits that the blade of Jeffers is directed toward use in surgical applications and lacks the capability for cutting metal foil, metal graphite composites and other materials of the like. For example, Jeffers discloses “a surgical knife that will precisely cut the IOL implant incision used in phacoemulsification.” (Col. 2, lines 3-6). Jeffers indicates that the blade is formed with a “thin cross-section.” (Col. 2, ll 64-65). Furthermore, Jeffers indicates that the tip flares so that it “is approximately 5.30 mm wide, the incision width preferred by many surgeons for intraocular lens (IOL) implantation.” (Col. 2, ll 12-15). Even further, Jeffers indicates that the tip has a width “so as to fit easily through the typical incision used for phacoemulsification cutting tip.” (Col. 3, ll 3-5). In this regard, the blade of Jeffers is understood to be configured for cutting tissue in surgical applications.

In contrast, Applicant’s blade is indicated as having the capability for cutting metal materials and other materials of the like. For example, Paragraph 0020 of the application expressly indicates that the cutting tool is adapted “for cutting a variety of suitable materials. Examples ... include sheet materials such as ... metal foil, and the like.” Paragraph 0020 further indicates that the cutting tool is adapted for cutting materials “include[ing] titanium graphite composites, titanium foil, ... and the like.” (Specification, Para. 0020).

Based upon the above, **Jeffers, as understood, is not configured for “cutting metal foil and/or a metal graphite composite”** as recited in amended Claims 40 and 49 and other materials of the like as disclosed in Paragraph 0020. Even further, Jeffers is not understood to disclose, suggest or even imply that the blade is configured for cutting metal foil, metal graphite composites and other materials of the like.

Application Serial No.: 10/809,698
Docket No.: 02-1001 (formerly 05165.1460)
Office Action of September 26, 2008

Applicants submit that Jeffers fails to teach all of the limitations of each of Claims 40 and 49. Therefore, it is believed that the 35 U.S.C. §103(a) rejection of Claims 40 and 49 is overcome. Claims 40 and 49 are therefore believed to be allowable as are all claims depending therefrom for at least the same reasons.

Conclusion

In view of the foregoing, the application is now believed to be in condition for allowance. Entry of the amendments and issuance of a Notice of Allowance is therefore respectfully requested. Should the Examiner have any suggestions for expediting allowance of the application, please contact Applicant's representative at the telephone number listed below.

Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-4750 with reference to our Docket No. 02-1001.

Respectfully submitted,

Date: <u>3/24/2009</u>	By: <u>/ Sean O'Neill /</u>
Customer No.: 77028	Sean O'Neill, Reg. No. 45,446
	NOVATECH IP LAW
	1001 Ave. Pico, Suite C500
	San Clemente, California 92673
	Telephone: (949) 466-3860